

आयकर अपीलीय अधिकरण, इंदौर न्यायपीठ, इंदौर
**IN THE INCOME TAX APPELLATE TRIBUNAL
INDORE BENCH, INDORE**

BEFORE SHRI VIJAY PAL RAO, JUDICIAL MEMBER
AND
SHRI B.M. BIYANI, ACCOUNTANT MEMBER

ITA No. 377/Ind/2022
(Assessment Year:2009-10)

M/s Comforts Shoppe Plot No.205, Zone-I M.P. Nagar Bhopal	Vs.	ACIT-CPC Bangalore
(Appellant / Assessee)		(Respondent/ Revenue)
PAN: AAFFC 1841 G		
Assessee by	Shri Ashish Porwal, AR	
Revenue by	Shri Ashish Porwal, Sr. DR	
Date of Hearing	20.06.2023	
Date of Pronouncement	22 .06.2023	

O R D E R

Per Vijay Pal Rao, JM:

This appeal by the assessee is directed against the order dated 02.09.2022 of Commissioner of Income Tax(Appeal), National Faceless Appeal Centre, Delhi for Assessment Year 2009-10. The assessee has raised following grounds of appeal:

01. That on the facts and in the circumstance of the case, a fair, proper and meaningful opportunity has not been allowed to the appellant to put up his defense on the issues disputed in this appeal.

02. That Id. CIT-Appeal has erred in dismissing the Appeal as beyond limitation of 30 Days from the date of the Intimation u/s 143(1) without affording an opportunity to Appellant to explain his case. This is against the principles of natural justice and therefore unlawful.

03. That Id. CIT-Appeal has erred on facts and in law in adjudicating that there is a delay of more than 07 years 07 Months, because of

Gross negligence of the assessee. As a matter of fact Original Intimation u/s 143(1) dated 05.09.2010 has never been delivered to the assessee. Factually, assessee received this Intimation on 27.04.2017 when it requested CPC, Bangalore to provide a copy of the same.

04. That contrary to Department's claim, the impugned Intimation u/s 143(1) dated 05.09.2010 has not been received by the assessee and as such the limitation period of 30 days should commence from the date when Appellant actually received the Intimation on 27.04.2017 against his request dated 23.04.2017.

05. Notwithstanding and without prejudice to the above, on the facts and in the circumstances of the case and in law, the ld. CIT(A) erred in holding that the delay in filing the appeal cannot be condoned. The appellant prays that the delay be condoned and appeal should be taken up for hearing.

06. On the facts and in the circumstances of the case and in law, the ld. CIT(A) erred in not deciding the issue on merits and not deleting the additions made by ACIT-CPC, Bangalore of Rs. 1,46,628/- (Rs. 2,79,748/- Rs. 1,33, 120/-). The appellant prays that the same may kindly be heard and allowed. The CPC, Bangalore has not given any break-up or reasons of it and as such addition is materially incorrect, bad on facts, baseless and therefore, unsustainable in law and liable to be deleted.

07. That the appellant craves leave to raise additional grounds and/or make amendment in the existing grounds on or before the date of hearing."

2. Ld. AR of the assessee has submitted that Ld. CIT(A) has dismissed the appeal of the assessee in limine being barred by limitation. He has pointed out that the Ld. CIT(A) has passed the impugned order holding the appeal of the assessee is not maintainable on the ground of limitation without giving an opportunity of hearing to the assessee to explain the delay in filing the appeal if any. He has submitted that return of income was processed by the CPC u/s 143(1) on 5th September 2010 however, assessee did not received the intimation u/s 143(1) in the E-mail ID or otherwise. The assessee received the intimation only in the year 2017 and thereafter immediately filed the appeal before the Ld. CIT(A). This fact of communication of the order is also stated in form no.35. But the Ld.

CIT(A) without giving an opportunity to the assessee to explain the delay has dismissed the appeal being barred by limitation.

3. Ld. AR has filed an application under Rule 29 of ITAT Rules 1963 and submitted that the assessee has now explained the reasons in the application for condonation of delay in filing the appeal before the Ld. CIT(A). Thus, the Ld. AR has pleaded that the matter may be set aside to the record of the CIT(A) for deciding the same afresh after giving an opportunity of hearing to the assessee and considering the explanation of the assessee on the point of limitation as explained in the application for condonation of delay.

4. On the other hand, Ld. DR has fairly submitted that the matter may be remanded to record of the Ld. CIT(A) for deciding the issue of limitation after considering explanation of the assessee.

5. Having considered the rival submissions as well as relevant material on record at the outset, we note that the Ld. CIT(A) presumed the fact that generally order is received within one week of the date of order and consequently disbelieved the fact stated in the form no.35 particularly regarding communication of the intimation u/s 143(1) dated 05.09.2010 on 28.04.2017. The Ld. CIT(A) has observed that the date of service shown in form no.35 is wrong and thereby the assessee to misguide the office of the CIT(A) as stated so. Since there was no response to the notices given by the Ld. CIT(A), therefore, the appeal of the assessee was dismissed on the ground of barred by limitation. The assessee has now filed an application for condonation of delay if any in filing the appeal before the Ld. CIT(A) and vehemently contended that the impugned intimation u/s 143(1) dated 5.09.2010 was not received by the assessee prior to 28.04.2017. We further notice that the Ld. CIT(A) has not issued any show cause notice to the assessee on the point of maintainability of appeal on the ground of the limitation. Therefore, in the facts and circumstances of the case and in the interest of justice the impugned order of the Ld. CIT(A) is set aside and matter is remanded to the record of the Ld. CIT(A) for

deciding the same afresh after considering the explanation of the assessee as given in the application for condonation of delay filed before us as well as after giving appropriate opportunity of hearing to the assessee.

6. In the result, appeal of assessee is allowed for statistical purposes.

Order pronounced in the open court on 22.06.2023.

Sd/-

(B.M. BIYANI)
Accountant Member

Sd/-

(VIJAY PAL RAO)
Judicial Member

Indore, 22 .06.2023

Patel/Sr. PS

Copies to: (1) *The appellant*
(2) *The respondent*
(3) *CIT*
(4) *CIT(A)*
(5) *Departmental Representative*
(6) *Guard File*

By order

Sr. Private Secretary
Income Tax Appellate Tribunal
Indore Bench, Indore